

**Our reference** RM/MT

11 August 2011

Mr M Thompson  
sent via email to request-80952-  
xxxxxxxx@xxxxxxxxxxxxxxx.xxx

**Direct line** 0844 798 8802  
**Email** r-mauler@audit-  
commission.gov.uk

Dear Mr Thompson

— **Your request for information - RFI 1428**

Thank you for your email of 8 August and your request for a review. I am the manager in charge of Freedom of Information and have not previously considered your request.

I have reviewed all your emails and have spoken to those involved. I have concluded that although there was one procedural error - not informing you of your right to an appeal, your request was dealt with appropriately and I can confirm that the Audit Commission does not hold the information you asked for.

Before I explain my reasoning, it would be helpful to explain some of the technical differences between the Audit Commission (the Commission) and the appointed auditor. I would also like to explain the differences between Freedom of Information and Section 49 of the Audit Commission Act.

Auditors are appointed by the Audit Commission under Section 3 of the Audit Commission Act 1998 (ACA) and operate under their own statutory powers, separate from those of the Audit Commission. Unlike the Audit Commission, appointed auditors are not “public authorities” for the purposes of the Freedom of Information Act 2000 (FOIA). This means that the information they hold is not subject to that Act.

In some of your emails you have reproduced sections from the Freedom of Information Act, setting out the responsibilities of a public authority which falls under the scope of the Act. Schedule 1 of the Act sets out exactly who is covered. Although the Audit Commission is listed, auditors are not.

We understand that this can be confusing, and in a similar case a requestor made a complaint to the Information Commissioner who agreed with the Commission and published a decision notice which may interest you:

[http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS\\_50261857.ashx](http://www.ico.gov.uk/~media/documents/decisionnotices/2010/FS_50261857.ashx)

Although auditors are not covered by Freedom of Information, they are subject to Section 49 of the Audit Commission Act 1998. Section 49 (S49) is different to Freedom of Information, inasmuch as it only allows for disclosure if certain requirements are met. There is also a subsequent section of s49, which is section 49ZA. This section sets out how material can be shared and the restrictions that can be imposed. I've attached a copy of both sections to my email.

A decision made by an auditor in relation to S49 or S49ZA is independent of the Commission and not one that we can review.

### **Your request**

On 26 July you wrote to the Commission and asked for your request to be sent to the most appropriate office. You asked for:

1. A copy of the written complaint(s)
2. Date investigation started
3. Persons interviewed by job description if naming not permitted,
4. Name and position of investigator
5. Details of records examined, please provide copies if possible.
6. Copies of any correspondence sent received during investigation.
7. Copies of any notes, a copy of any phone records / conversation made.
8. Copies of any reports internal / external made
9. Details of any councillors interviewed.
10. Details of cost of investigation with a breakdown of those costs and who is liable to pay.

Upon receipt, an initial search was carried out to see if the Commission held any of the information. Members of our Audit, Policy and Regulation team were contacted and confirmed that we did not hold the any of your requested information.

On 27 July, Deborah Manns-Benson provided the Commission's initial response and explained this to you. Although not required, Deborah wanted to be helpful and also made enquiries with the appointed auditor, who confirmed that she did indeed hold some of the information and would consider your request under S49. The auditor was copied in on that email.

Although you were not explicitly told about how you could appeal, you have since contacted us a number of times, asked for a review and I have concluded that this has made no material difference to your request.

Following Deborah's initial response and some telephone contact you emailed Julie Hope, Director of the Chief Executive and Chairman's Office and asked for matters to be reviewed as you were sure that the Commission did hold the information and that someone from the Commission, rather than the appointed auditor, had attended a meeting. From the information I have seen, you have not provided the name of this person, or dates of when they attended possible meetings.


On 5 August Deborah wrote back to you and provided further explanation about Freedom of Information and Section 49. She also repeated that the Commission did not hold the information you'd asked for.

On 8 August you emailed again, and asked for an appeal and explained that you had concerns that you were contacted against your wishes by an investigator. I presume you mean Jackie Bellard, the appointed auditor, who you were advised would contact you by Deborah and who was copied into in her first response. You also pointed out to Jackie in your email of 27 July that you could be contacted on your land line telephone number which you provided to her.

Following my review I confirm that the Commission does not hold the information you have asked for. This response letter concludes the Commissions review process and we will not revisit your request any further. I am aware that the appointed auditor has offered to consider your request under section 49, if you provide a personal address for correspondence. You should now decide if you feel able to provide her with that address to further your request. However, this is not something the Commission can assist with.

I hope that my response has explained things in a bit more detail; however, you now have the right to appeal to the Information Commissioner if you are unhappy with my decision. Details of how to do this are attached.

Yours sincerely

A handwritten signature in purple ink that reads "Rob Mauler". The signature is written in a cursive, flowing style.

Rob Mauler  
*Public Enquiries Manager*